



**[BILLING CODE: 6750-01S]**

**FEDERAL TRADE COMMISSION**

**[File No. 112 3143]**

**EPN, Inc.; Analysis of Proposed Consent Order to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

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**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

**DATES:** Comments must be received on or before July 9, 2012.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "EPN, File No. 112 3143" on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/epnconsent>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Jessica Lyon (202-326-2344), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade

Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 7, 2012), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 9, 2012. Write "EPN, File No. 112 3143" on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health

information. In addition, do not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>1</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/epnconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “EPN, File No. 112 3143” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight

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<sup>1</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 9, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

### **Analysis of Agreement Containing Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from EPN, Inc.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The Commission's proposed complaint alleges that EPN, which does business as Checknet, Inc., is a Utah corporation that is in the business of collecting debts for clients in a variety of industries, including commercial credit, retail, and healthcare. According to the complaint, In conducting business, EPN routinely obtains information about its clients' customers, which includes, but is not limited to: name, address, date of birth, gender, Social Security number, employer address, employer phone number, and in the case of healthcare clients, physician name, insurance number, diagnosis code, and medical visit type.

The complaint further alleges that EPN engaged in a number of practices that, taken

together, failed to provide reasonable and appropriate security for personal information on its computers and networks. In particular, EPN failed to: (1) adopt an information security plan that was appropriate for its networks and the personal information processed and stored on them; (2) assess risks to the consumer personal information it collected and stored online; (3) adequately train employees about security to prevent unauthorized disclosure of personal information; (4) use reasonable measures to assess and enforce compliance with its security policies and procedures, such as scanning networks to identify unauthorized peer-to-peer (“P2P”) file sharing applications and other unauthorized applications operating on the networks or blocking installation of such programs; and (5) use reasonable methods to prevent, detect, and investigate unauthorized access to personal information on its networks, such as by adequately logging network activity and inspecting outgoing transmissions to the Internet to identify unauthorized disclosures of personal information.

The complaint alleges that as a result of these failures, an EPN employee was able to install a P2P application on her desktop computer, which was connected to EPN’s computer network, resulting in two files containing personal information about a client’s customers being made available on a P2P network; other files containing personal information may also have been shared to P2P networks from that computer. The breached files contained personal information about approximately 3,800 consumers, including each consumer’s name, address, date of birth, Social Security number, employer name, employer address, health insurance number, and a diagnosis code. The complaint alleges that such information, among other things, can easily be used to facilitate identity theft (which also could result in medical histories that are inaccurate because they include the medical records of identity thieves) and exposes sensitive medical data.

In fact, the presence of P2P software on business computers can pose significant data security risks. A 2010 FTC examination of P2P-related breaches uncovered a wide range of sensitive consumer data available on P2P networks, including health-related information, financial records, and drivers' license and social security numbers. *See* Press Release, FTC, Widespread Data Breaches Uncovered by FTC Probe (Feb. 22, 2010), <http://www.ftc.gov/opa/2010/02/p2palert.shtm>. Files shared to a P2P network are available for viewing or downloading by any computer user with access to the network. Generally, a file that has been shared cannot be removed permanently from the P2P network. In addition, files can be shared among computers long after they have been deleted from the original source computer.

According to the complaint, EPN's failure to employ reasonable and appropriate measures to prevent unauthorized access to personal information caused, or is likely to cause substantial injury to consumers that is not offset by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. Therefore, EPN's practices were, and are an unfair act or practice, in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. §45(a).

The proposed order contains provisions designed to prevent EPN from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order prohibits misrepresentations about the privacy, security, confidentiality, and integrity of any personal information collected from or about consumers. Part II of the proposed order requires EPN to establish, implement, and thereafter maintain a comprehensive information security program, including the designation of an employee to oversee EPN's security program, employee training, and implementation of reasonable safeguards. Part III of the order requires EPN to obtain, for a period of twenty years, biennial

assessments of its information security program from an independent third-party professional possessing certain credentials or certifications.

Parts IV through VIII of the proposed order are reporting and compliance provisions. Part IV requires EPN to retain documents relating to its compliance with the order. For most records, the order requires that the documents be retained for a five-year period. For the third party assessments and supporting documents, EPN must retain the documents for a period of three years after the date that each assessment is prepared. Part V requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates that EPN submit a compliance report to the FTC within 90 days, and periodically thereafter as requested. Part VIII is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

By direction of the Commission.

Richard C. Donohue  
Acting Secretary.

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